IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5551 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHRI B.B. DAVE,

Versus

STATE OF GUJARAT

Appearance:

MR BD KARIA for Petitioner No. 1
MR KM PARIKH, AGP for Respondent.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 16/08/2001

ORAL JUDGEMENT

This petition has been filed for a direction to the respondent authority to make payment of the gratuity amount together with interest @ 18% from beginning till realisation.

2. The petitioner was working as a Project Officer

in Panchayat and Rural Housing Development at Vyara in District, Surat and he retired on attaining the age of superannuation, on 30-6-1985. Before retiring, the petitioner was issued show cause notice on 25-6-1985 in respect of misappropriation of funds in scarcity at Jamnagar for the year 1969-70 and Criminal Case in respect of which was registered for the offence punishable u/s 409-465-467-468-471-477 r/w/s 34 and 114 of the I.P. Code. Thereafter, the petitioner has been acquitted in the Criminal Case as stated above by the Chief Judicial Magistrate, Jamnagar vide his order dated 6-6-1979. Thereafter, the State of Gujarat preferred appeal against the acquittal of the petitioner in this Court being Criminal Appeal No. 1198/79 and this Court has dismissed the said criminal appeal vide order dated 3-3-1983 and the order of the Chief Judicial Magistrate, Jamnagar acquitting the petitioner has been confirmed. The State Government has also exonerated the petitioner by its order dated 4-6-1987 with regard to the misconduct and irregularities alleged to have been committed by the petitioner in the year 1969-70. Thereafter, in respect of the aforesaid misconduct and irregularity the chargesheet dated 29-6-1985 was issued to the petitioner on 30-6-1985. Thereafater, the petitioner filed reply to the said charge sheet on 9-7-1985. The show cause notice dated 30-1-1986 was issued to the petitioner and the petitioner replied to the show cause notice by his letter dated 1-2-1986. The petitioner was given personal hearing pursuant to the letter dated 24-4-1986 and the petitioner has been exonerated from the aforesaid alleged misconduct and irregularities vide order dated 4-6-1987. The copy of the order dated 4-6-1987 has been filed as Annexure-B to the petition. Even then the petitioner has not been paid the gratuity amount.

3. The contention of the learned counsel for the petitioner is that after holding and declaring the petitioner as an innocent in the inquiry contemplated under the petitioner under the Rules 1959, the petitioner has not been paid gratuity amount and the same has been withheld illegally and arbitrarily by the respondent authority.

4. Heard the learned counsel for the parties and perused the relevant material on record.

5. Rule 189 or 189A of the Rules 1959 does not empower the State Government to withhold the gratuity amount or any part thereof. These rules are only in respect of the pension or any part thereof to be withheld in contemplation of the inquiry. If the gratuity amount was withheld in contemplation of the inquiry. Now, the

order of the respondent authority has been passed declaring the petitioner as an innocent in the inquiry contemplated against the petitioner and hence the petitioner is entitled to the gratuity amount. As the amount of interest has also been claimed by the petitioner, in the facts and circumstances of the case, the petitioner is entitled to the interest at the rate of 9% in case the gratuity amount has not been paid to the petitioner. Therefore, this petition deserves to be allowed.

6. Accordingly, this petition is allowed and the respondent is directed to pay the gratuity amount together with interest at the rate of 9% from the date when it became due till the date of payment, within a period of three months from today. It is further clarified that in case the gratuity amount has been paid to the petitioner, in that event the respondent is directed to calculate and pay the amount of interest from the due date till the date when the payment of gratuity amount was paid to the petitioner. Rule is made absolute to the aforesaid extent, with no order as to costs.

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/JVSatwara/